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ABSTRACT

This paper outlines the provisions of the Fair Labor Standards Act (sometimes referred to as the Wage-Hour Law) that establishes a minimum wage, subminimum wage, training wage overtime pay, and recordkeeping requirements. The following topics are addressed: (1) covered employment; (2) exemptions; (3) hours worked; (4) board, lodging, and other facilities, tips and wages; (5) overtime pay; (6) employment relationships; (7) subminimum wages; (8) recordkeeping, subminimum wage certificates; (9) definitions; (10) applications; (11) federal child labor regulations; and (12) cooperative vocational education and the law. (KC)

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Legal Issues Involving Student Workers

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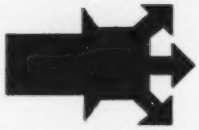

FEDERAL WAGE AND HOUR REGULATIONS

The Fair Labor Standards Act, sometimes referred to as the Wage-Hour Law, was initially passed by Congress in 1938; and has since been amended several times. As a result, the Fair Labor Standards Act (FLSA) contains provisions addressing several different employment practices. This module will look at the provisions of the FLSA which establish a minimum wage, sub-minimum wage, training wage, overtime pay and record keeping requirements.

Under the Fair Labor Standards Act, all covered, non-exempt workers are entitled to the established, minimum hourly wage rate of $5.15 per hour and should receive overtime pay at a rate of at least one and one-half times their regular rates of pay after 40 hours of work in a workweek. However, no provision or order of the FLSA excuses noncompliance with any federal or state law which establishes higher standards.

While the Fair Labor Standards Act contains minimum wage and overtime pay provisions, there are numerous employment practices which it does not regulate. Some of these are as follows:
- vacation, holiday, severance, or sick pay.
- meal or rest periods, holidays off, or vacations.
- premium pay for weekend or holiday work.
- pay raises or fringe benefits.
- a discharge notice, reason for discharge, or immediate payment of final wages.
- any limit on the number of hours of work for persons 16 years of age or older.

COVERED EMPLOYMENT

Employment may fall under the coverage of the FLSA on two different bases, the enterprise basis and the individual employee basis.

Covered Enterprises

Employers whose enterprises are covered by the Fair Labor Standards Act are obligated to abide by the minimum wage and overtime pay provisions of the FLSA unless otherwise exempt under the FLSA, covered enterprises include:

1. Employees engaged in interstate commerce or in the production of goods for interstate commerce (i.e., goods that travel across state lines and possibly the processing of a credit card or the acceptance of a personal check).
2. Employees who work for enterprises that have an annual gross volume of sales or business done of over $500,000.
3. Employees of hospitals, residential facilities that care for those who are physically or mentally ill or disabled, or aged, schools for children who are mentally or physically gifted, pre-schools, elementary and secondary schools, and institutions of higher education, regardless of the annual volume of business.
4. Employees of public agencies.

Grandfather Clause

Any enterprise that ceases to be covered by virtue of the increase in the enterprise coverage dollar volume test continues to be subject to the overtime pay and child labor provisions of the FLSA. They need to check with their regional Wage and Hour Office to determine the appropriate hourly wage they must pay.

Individual Employee Coverage

Individual employees who are not employed in a covered enterprise may still be entitled to the federal minimum wage and overtime pay as provided by the Fair Labor Standards Act. These include the following:

-- communication and transportation workers
-- employees who handle, ship, or receive goods moving in interstate commerce
-- clerical or other workers who regularly use the mail, telephone, or telegraph for interstate communication or who keep records on interstate transactions
-- employees who regularly cross state lines in the course of their work
-- employees of independent employers who perform clerical, custodial maintenance, or other work for firms engaged in commerce or in the production of goods for commerce.

Domestic service workers such as maids, day workers, housekeepers, chauffeurs, cooks, or full-time baby sitters are also covered if they:

1. receive at least $50 in cash wages in a calendar quarter from their employer or
2. work a total of more than 8 hours a week for one or more employers.

EXEMPTIONS

Some employees are excluded from the minimum wage and/or the overtime provisions of the Fair Labor Standards Act. However, since these exemptions are narrowly defined, employers should carefully check exact terms and conditions before applying an exemption in any given situation.

Minimum Wage and Overtime Exemptions

Several different types of employees may possibly be exempt from both the minimum wage and overtime pay provisions of the Fair Labor Standards Act. As mentioned, the conditions of these exemptions are very specific. The following are examples of employees who may be exempt:

-- executive, administrative and professional employees; and outside sales persons
-- employees of certain seasonal amusement or recreational establishments and certain small newspapers, switchboard operators of small telephone companies, seamen employed on foreign vessels, and employees engaged in fishing operations
-- farm workers who work for anyone who did not use more than 500 "man-days" of farm labor in any calendar quarter of the previous calendar year

-- casual babysitters and persons employed as companions to the elderly or infirm

Overtime Exemptions

Some employees who are entitled to the federal minimum wage may be exempt from the overtime provisions of the Fair Labor Standards Act. Once again, these exemptions are very specific and employers should be cautious when using an exemption. Some of the employees who may be covered by an overtime exemption are as follows:

-- certain highly-paid commission employees of retail or service establishments
-- auto, truck, trailer, farm implement, boat, or aircraft sales workers; or parts men and mechanics servicing autos, non-manufacturing establishments primarily engaged in selling these items to ultimate purchasers
-- employees of railroads and air carriers, taxi drivers, certain employees of motor carriers, seamen on American vessels, and local delivery employees paid on approved trip rate plans
-- announcers, news editors, and chief engineers of certain non-metropolitan broadcasting stations
-- domestic service workers residing in employers' residences
-- employees of motion picture theaters and farm workers

HOURS WORKED

An employee who is covered by the pay provisions of the Fair Labor Standard Act must be paid in accordance with these provisions for all hours worked. In general, "hours worked" includes all time that an employee is required to be on duty, or on the employer's premises, or at a prescribed workplace for the employer, and all time during which the employee is suffered or permitted to work for the employer..

Hours worked have been established by the Supreme Court as including at least all time spent in "physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer or his business." It includes any work which the employee performs on or away from the premises, if the employer knows or has reason to believe that the work is being performed.

Under the Fair Labor Standards Act, employees must be paid for all time spent:

-- doing their jobs
-- getting ready to work, this includes such preparatory work as cleaning and oiling machines, saw filing, setting up machines, lighting fires in heating and pressing equipment, laying out their own work or that of other employees, and assembling materials
-- learning their jobs; while learning, they should be paid for watching others as well as for doing the work themselves
-- correcting theirs or others' work
-- preparing time slips, work tickets, and production sheets
-- getting medical care; the time a worker spends waiting for and receiving medical care

should be counted as hours worked if treated at the place of work or at the employer's direction during the work day

-- standing by until a breakdown is repaired or if the breakdown time is too short or its length too indefinite for the workers to use the time effectively for themselves

-- working at meal time; operators who must tend to machines while they are eating must be paid. In addition, if a worker is not allowed adequate time to eat, usually 30 minutes, that time is also counted as hours worked

-- changing clothes or washing on the firm's premises before or after working if it is required by the employer, by some law, or by the nature of the work

Examples of time that is not counted as hours worked are:

-- the workers are told during a breakdown that they may leave for a specified time, which is long enough to use effectively for their own purposes

-- the workers are waiting to be hired or waiting on their own initiative to see if work will be available

-- the workers are told they are free to leave for a definite time, which is sufficiently long for effective use

-- the employee has a mealtime free of duties and is not subject to call. The meal period must be long enough, usually at least 30 minutes. Mealtime free of duties need not be counted as working time even if the employees eat where they work.

-- the worker's changing and washing time is expressly excluded as time worked by a collective bargaining agreement, or by custom or practice under it. If the workers change or wash only for their own convenience, it need not be counted as time worked.

-- the worker is asked to mail a few letters on the way home

BOARD, LODGING AND OTHER FACILITIES

Under the Fair Labor Standards Act, all non-exempt employees must be compensated for their work at not less than the current minimum wage. However, it does not require that all wages be paid in cash. Employers may claim a credit toward meeting the minimum wage for the reasonable cost of fair value; whichever is the lesser, for board, lodging or other facilities which are customarily furnished to their employees. Reasonable cost or fair value does not include a profit to the employer or any other affiliated person and employees must voluntarily accept facilities as part of their wages.

Housing that is furnished for dwelling purposes or meals that are provided by employers are generally acknowledged as being includable as wages. Of prime consideration in these situations is whether the facilities are provided to benefit the employer or the employee. Uniforms and tools required by the employer are not considered facilities for which the employer may take credit in meeting the minimum wage. If the wearing of a uniform is required by some law, the nature of the business, or by the employer, the cost of the uniform is considered to be a business expense of the employer. If the employer requires the employee to bear the cost, it may not reduce the employee's wage below the

minimum wage or cut into overtime compensation required by the Fair Labor Standards Act.

TIPS AS WAGES

The FLSA provides that an employer of tipped employees may consider tips as a part of their wages; however, such wage credits must not exceed 50 percent of the minimum wage rate. The employees must in fact be "tipped employees" and the payments claimed as tips must actually constitute "tips".

Employers who elect to use the tip credit provision must inform their employees in advance and must be able to show that the employees receive at least the minimum wage when direct wages and the tip credit allowance are combined. Also, employees must retain all of their tips, except to the extent that they participate in a valid tip pooling or sharing arrangement.

Tipped Employees

A "tipped employee" under the FLSA is any employee engaged in an occupation in which she/he customarily and regularly receives more than $30 a month in tips. This minimum monthly standard applies regardless of whether an employee works full-time or part-time. If an employee's tips do not total more than $30 a month, she/he must receive the full minimum wage without any deduction for the tips received.

Tips

Payments to employees that are to be used as part of their wages must be presented by a customer as a gift or gratuity in recognition of some service performed. The customer should decide whether a tip will be given and its amount. Tips can be paid in cash, check or other negotiable instrument; or credit card customers may add specified amounts to their bills. However, gifts such as theater tickets, passes or merchandise do not qualify as tips.

OVERTIME PAY

A covered employee who is not subject to an overtime pay exemption must be paid not less than one and one-half times his or her regular rate of pay for all hours worked over 40 in a workweek. The Fair Labor Standards Act does not require that an employee be paid on a weekly basis. The employer may pay the employee at other regular intervals, such as every two weeks, every half-month, or once a month. However, the Fair Labor Standards Act does require that both the minimum wage and any overtime pay due an employee be computed on the basis of the hours worked in each workweek and that the compensation earned by that employee be paid on the regular payday for the pay period. An employer cannot average an employee's hours of work over two or more workweeks.

Workweek

A workweek is a regular recurring period of 168 hours in the form of seven consecutive 24-hour periods. The workweek need not be the same as the calendar week and may begin on any day of the week, at any hour of the day. However, once established, a workweek may not be changed unless the change is intended to be permanent.

Regular Rate

An employee's regular rate of pay includes all remuneration for employment such as commissions, attendance bonuses, production bonuses, shift differentials, and other payments for work actually performed, including the cost of any facilities furnished to an employee.

Payment of Overtime Wages

The requirement that overtime pay must be paid after 40 hours of work in a workweek may not be waived by agreement between the employer and employees. Similarly, an agreement that only 8 hours a day or only 40 hours a week will be counted as working time will not satisfy the overtime pay requirement. An announcement by the employer that no overtime work will be permitted, or that overtime work will not be paid for unless authorized in advance also will not impair the employee's right to compensation for the overtime work.

Compensatory Time

Generally, the granting of compensatory time-off in lieu of paying proper overtime pay for overtime hours worked will not satisfy the requirements of the Fair Labor Standards Act. An employer may not credit an employee with compensatory time off (even at a time and one-half rate) for overtime earned which is to be taken at some mutually agreed upon date subsequent to the end of the pay period in which the overtime was earned.

The only employees who may be granted "comp time" in lieu of regular overtime pay are those who work for state and local governments. These types of governments have the option of granting employees time-and-a-half overtime pay or compensatory time-off at the same rate.

Time-off Plan

An employer can comply with the Fair Labor Standards Act and continue to pay a fixed wage or salary each pay period, even though the employee works overtime in some week or weeks within the pay period, under a time-off plan. In such a plan, the employer lays off the employee for a sufficient number of hours during some other week or weeks of the pay period so that the desired wage or salary for the pay period covers the total amount of compensation, including the overtime compensation, due the employee for each workweek taken separately.

A simple illustration of such a plan is as follows: An employee is paid on a biweekly basis of $400 at the rate of $200 per week for a 40-hour workweek. In the first week of the pay period the employee works 44 hours and would be due (40 hours x $5) + (4 hours x $7.50), for a total of $230 for the week. So that the payment of the $400 at the end of the biweekly pay period will satisfy the monetary requirements of the Fair Labor

Standards Act, the employer permits the employee to work only 34 hours during the second week of the pay period. The employee is entitled to $170 for the second week (34 hours x $5), thus $400 ($230 +$170) for the biweekly pay period.

EMPLOYMENT RELATIONSHIPS

Before the provisions of the Fair Labor Standards Act apply to a person's employment, an employer-employee relationship must exist. An employment relationship requires an "employer" and an "employee," and the act or condition of employment. The courts have made it clear that an employment relationship under the Fair Labor Standards Act is broader than the traditional common law concept of master and servant. The difference between an employment relationship under the Fair Labor Standards Act and one under the common law arises from the fact that the term "employ" as defined in the Fair Labor Standards Act includes "to suffer or permit to work." Mere knowledge by an employer of work done for him or her by another is sufficient to create an employment relationship under the Fair Labor Standards Act.

Employment Relationship of Trainees

The Supreme Court has held that persons who, without any expressed or implied compensation agreement, work for their own advantage on the premises of another are not necessarily employees. Whether trainees or students are employees under the Fair Labor Standards Act depends upon all of the circumstances surrounding their activities on the premises of the employer. If all six of the following criteria are met, the trainees or students are not considered employees within the meaning of the act.

1. The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school;
2. The training is for the benefit of the trainees or students;
3. The trainees or students do not displace regular employees, and work under the direct supervision of a full-time employee;
4. The employer that provides the training derives no immediate advantage from the activities of the trainees or students, and on occasion the operations may actually be impeded;
5. The trainees or students are not necessarily entitled to a job at the conclusion of the training period; and
6. The employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training

It shall be agreed that parties participating in the program will not discriminate in employment opportunities on the basis of race, color, sex, natural origin, or disability.

Employment Relationships of Disabled Trainees

Where ALL of the following criteria are met, the U.S. Department of Labor will NOT assert an employment relationship for purposes of the Fair Labor Standards Act.

Participants will be youth with physical and/or mental disabilities for whom competitive employment at or above the minimum wage level is not immediately obtainable and who, because of their disability, will need intensive on-going support to perform in a work setting.

Participation will be for vocational exploration, assessment, or training in a community-based placement work site under the general supervision of public school personnel.

Community-based placements will be clearly defined components of individual education programs developed and designed for the benefit of each student. The statement of needed transition services established for the exploration, assessment, training, or cooperative vocational education components will be included in the students' Individualized Education Program (IEP).

Information contained in a student's IEP will not have to be made available: however, documentation as to the student's enrollment in the community-based placement program will be made available to the Departments of Labor and Education. The student and the parent or guardian of each student must be fully informed of the IEP and the community-based placement component and have indicated voluntary participation with the understanding that participation in such a component does not entitle the student-participant to wages.

The activities of the students at the community based placement site do not result in an immediate advantage to the business. The Department of Labor will look at several factors.

1. There has been no displacement of employees, vacant positions have not been filled, employees have not been relieved of assigned duties, and the students are not performing services that, although not ordinarily performed by employees, clearly are of benefit to the business.

2. The students are under continued and direct supervision by either representatives of the school or by employees of the business.

3. Such placements are made according to the requirements of the student's IEP and not to meet the labor needs of the business.

4. The periods of time spent by the students at any one site or in any clearly distinguishable job classification are specifically limited by the IEP.

While the existence of an employment relationship will not be determined exclusively on the basis of the number of hours, as a general rule, each component will not exceed the following limitation during any one school year:

Vocational exploration ----- 5 hours per job experienced
Vocational assessment ----- 90 hours per job experienced

Vocational training ----- 120 hours per job experienced

Students are not entitled to employment at the business at the conclusion of their IEP. However, once a student has become an employee, the student cannot be considered a trainee at that particular community-based placement unless in a clearly distinguishable occupation.

It is important to understand that an employment relationship will exist unless all of the criteria described in this policy guidance are met. Should an employment relationship be determined to exist, participating businesses can be held responsible for full compliance with FLSA, including the child labor provisions.

Business and school systems may at any time consider participants to be employees and may structure the program so that the participants are compensated in accordance with the requirements of the Fair Labor Standards Act. Whenever an employment relationship is established, the business may make use of the special minimum wage provisions provided pursuant to section 14(c) of the Act.

SUBMINIMUM WAGES

The Fair Labor Standards Act provides for the employment of certain individuals at sub-minimum wages to prevent the curtailment of their employment opportunities. Before such individuals may be employed at subminimum wages, a certificate must be obtained from the Wage and Hour Division of the United States Department of Labor. Regulations governing the conditions under which subminimum wage certificates may be issued are prescribed by the Secretary of Labor. The issuance of subminimum wage certificates by the Wage and Hour Division do not permit noncompliance with any child labor provision of the Fair Labor Standards Act nor other Federal laws or regulations, State law, or local ordinance. Applications for certificates should be made to the appropriate Wage and Hour Regional Office

Student-Learners

If enrolled in a bona fide vocational training program, student-learners may be employed at subminimum wages on a part-time basis at no less than 75% of the applicable minimum wage. Authorization to employ a student-learner at subminimum wage does not begin until the employer forwards an application to the Regional Office of the Wage and Hour Division.

Apprentices

Also provided for is the employment at subminimum wages of apprentices. Such training must be in skilled trade, which is an apprenticeable occupation. Authorization is required from the Regional Office of the Wage and Hour Division to employ an apprentice at sub-minimum wage.

Learner
A learner is a worker whose total experience in an authorized learner occupation in the last 3 years is less than the period of time allowed as a learning period in that occupation.

Messenger
Employees who deliver letters and messages.

ELIGIBLE SUBMINIMUM WAGE EARNERS

TYPE OF EARNER	ELIGIBLE EMPLOYER	% OF MINIMUM WAGE
STUDENTS		
full-time students of institutions of higher ed. (see 29 CFR 519.11)	institutions of higher education	no less than 85%
full-time students at any level, at least 14 years of age (see 29 CFR 519.1)	retail, service or agriculture establishments	no less than 85%
part-time student workers, at least 16 years of age (see 29 CFR 527.1)	shops owned by student's school	no less than 75%
part-time student learners working in a bona fide vocational training program (see 29 CFR 529.1)	accredited school, college or university	no less than 75%
DISABLED WORKERS		
disabled or aged workers (see 29 CFR 524.1)	all employers	no less than 50-75%
disabled workers in training programs, multi-handicapped workers, or severely handicapped workers (see 29 CFR 529.1)	generally nonprofit institutions or workshops	commensurate wages
patient workers (see 29 CFR 529.1)	hospital institution	no less than 50%
APPRENTICES (see 29 CFR 521.1)	all employers	determined by DOL on a case-by-case basis
LEARNERS (see 29 CFR 522.1)	all employers	determined by DOL on a case-by-case basis
MESSENGERS (SEE 29 CFR 523.1)	all employers	determined by DOL on a case-by-case basis

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Full-Time Students

The employment of full-time students at subminimum wages in retail or service establishments, agriculture, or in institutions of higher education where such students are enrolled is also allowed. Full-time students employed under certificates may be paid no less than 85 percent of the statutory minimum wage. Full-time student status is determined by the institution the student is attending. Authorization to employ full-time students at subminimum wages must be obtained by the employer from the Regional Office of Wage and Hour Division.

Workers With Disabilities

Disabled workers must not be paid less than their commensurate wage rate. Commensurate wage rates are based upon the individual disabled worker's productivity as compared with the productivity of nondisabled workers performing essentially the same type of work in the same industry and in the same vicinity. The worker's disability must impair productivity for the particular job or occupation in question. Disabled workers may be employed under certificates in nonprofit sheltered workshops, as patient workers in hospitals or institutions, or individually in competitive industry. A certificate must be obtained by the employer from the Regional Office of the Wage and Hour Division before subminimum wages may be paid.

RECORDKEEPING

Certain records must be kept in accordance with the Fair Labor Standards Act. Most of this required information is the kind employers usually keep in ordinary business practices and in complying with other laws and regulations.

Records required for exempt employees differ from those for nonexempt workers. Special information is also required on employees under unusual pay arrangements or to whom board, lodging, or other facilities are furnished. Records of the required information must be preserved for 3 years. Some supplementary items like time cards, piecework tickets, and order and shipping records need to be kept only 2 years. Microfilm copies of records are generally acceptable.

Some of the specific recordkeeping items required are as follows:

- personal information, including employee's name, home address, occupation, sex, and birth date (if under 19 years of age)
- hour and day when workweek begins
- total hours worked each workday and each workweek
- total daily or weekly straight-time earnings
- regular hourly pay rate for any week when overtime is worked
- total overtime pay for the workweek
- deductions from or additions to wages
- total wages paid each pay period
- date of payment and pay period covered

SUBMINIMUM WAGE CERTIFICATES

The Fair Labor Standards Act permits covered enterprises to employ student-learners at subminimum wages in order to prevent the curtailment of employment opportunities for these students. Before a special student-leader waiver may be utilized, an employer must file an application with the Regional Office of the Wage and Hour Division, U.S Department of Labor, requesting a student-learner at subminimum wage.

DEFINITIONS

These special certificates permit student-learners who are enrolled in a bona fide vocational training program to be employed at no less that 75% of the applicable minimum wage for one school year.

A student-learner is a student who is at least 16 years of age, is receiving instruction in an accredited school, and is employed on a part-time basis under a bona fide vocational training program administered by the school.

A bona fide vocational training program is one that has been approved by the State Board of Vocational Education. Such a program must provide for part-time employment training integrated with an organized plan of instruction designed to teach technical knowledge and related industrial information given as a regular part of the student-learner's course of study.

Generally, a school year is considered to be the two consecutive school semesters, or a combination of the summer vacation period and the fall semester or the spring semester and the summer vacation period. Certificates do not authorize employment at a subminimum wage beyond the date of graduation.

APPLICATIONS

Employers must file a separate application, FormWH-205, for each student-learner he/she proposes to employ at subminimum wages. Although the employer is responsible for filing the application, parts of the application are best completed by a school official—generally the teacher-coordinator.

The student-learner, the employer, and the school official must sigh the application. A copy of the application must be retained in the employer's files and copies should be given to the school and the student-learner.

Applications must be filed 15 to 30 days before the student-learner is to begin working, and they must be filed before the student-learner starts to work; <u>special student-learner certificates will not be issued retroactively.</u> Employment of the student-learner at the subminimum rate becomes effective once the application in mailed. After 30 days, the application becomes the permanent special student-learner certificate unless the application is denied, modified, or the review period is extended.

Mandatory Conditions

The following conditions must be satisfied before a special certificate will be issued authorizing the employment of a student-learner at subminimum wages:

- The occupation must not be one for which a student-learner application was previously submitted by the employer and a special certificate was denied.

- The student-learner's employment must be directly related to his/her course of study and vocational training program.

- The training program under which the student-learner will be employed must be a bona fide vocational training program.

- The employment of the student-learner at a subminimum wage must be necessary to prevent curtailment of opportunities for employment.

- The student-learner must be at least 16 years of age unless he/she is to be employed in an occupation that has been declared hazardous, in which case the student-learner must be 18 years of age.

- The occupation for which the student-learner is receiving preparatory training must require a sufficient degree of skill to necessitate a substantial learning period.

- The training must not be for the purpose of acquiring manual dexterity and high production speed in repetitive operations.

- The employment of a student-learner must not displace a company's regular worker.

This information is for the purpose of assisting school-to-work individuals in meeting their responsibility with respect to your employment. It is not a legal interpretation of the laws.

Questions regarding the Fair Labor Standards Act should be referred to the U.S. Department of Labor, Wage and Hour Division.

FEDERAL CHILD LABOR REGULATIONS

The Fair Labor Standards Act not only includes provisions for a minimum wage, overtime compensation, equal pay, and record keeping; it also provides standards for the employment of minors. These provisions are designed to confine the employment of minors to periods which will not interfere with their schooling and to conditions which will not jeopardize their health and well-being.

The Child Labor Provisions apply to the employment of children by enterprises covered under the Fair Labor Standards Act even though establishments may be exempt from its monetary provisions. All states have child labor laws and most have compulsory school attendance laws. These state laws or other federal laws may have higher standards than those established under the Fair Labor Standards Act. When these other laws are applicable, the more stringent standards must be observed.

The Child Labor Provisions of the Fair Labor Standards Act have been divided into two categories:

Requirements in Nonagricultural Occupations
Requirements in Agricultural Occupations

NONAGRICULTURAL OCCUPATIONS

Some working minors are exempt from the Child Labor Requirements in Nonagricultural Occupations. They include:

- Children under 16 years of age employed by their parents in occupations other than manufacturing or mining, or occupations declared hazardous by the Secretary of Labor.
- Children employed as actors or performers in motion pictures, theatrical, radio, or television productions.
- Children engaged in the delivery of newspapers to the consumer.
- Homeworkers engaged in the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens (including the harvesting of evergreens).
- Domestic service employees working in or about the household of the employer.

Minimum Age Standards

The following minimum age standards have been established for employment in nonagricultural occupations:

14--Minimum age for employment in specified occupations outside school hours.

16--Basic Minimum Age For Employment. At 16 years of age youths may be employed in any occupation that has not been declared hazardous by the Secretary of Labor.

18--Minimum age for employment in those occupations declared hazardous by the Secretary of Labor. This minimum age applies even when a minor is employed by a parent.

Hazardous Occupations Orders

The Fair Labor Standards Act provides a minimum age of 18 years for any nonagricultural occupation which the Secretary of Labor "shall find and by order declare" to be particularly hazardous or detrimental to the health and well-being of minors under that age.

Seventeen hazardous occupations orders are now in effect. They deal with occupations that involve:

1. Manufacturing and storing explosives
2. Motor-vehicle driving and outside helper
3. Coal mining
4. Logging and saw-milling
* 5. Power-driven woodworking machines
6. Exposure to radioactive substances
7. Power-driven hoisting apparatus

* 8. Power-driven metal-forming, punching, and shearing machines
9. Mining, other than coal mining
*10. Slaughtering, or meat-packing, processing or rendering
11. Power-driven bakery machines
*12. Power-driven paper-products machines

13. Manufacturing brick, tile, and kindred products
*14. Power-driven circular saws, band saws, and guillotine shears
15. Wrecking, demolition, and shipbreaking operations
*16. Roofing operations
*17. Excavation operations

18. Messenger service occupations

Hazardous Occupations Exemptions

Although the Fair Labor Standards Act is very explicit concerning the minimum age for employment in nonagricultural occupations that have been declared hazardous, there are some exemptions to this minimum age standard.

Apprentices and Cooperative Vocational Education student-learners who are at least 16-years-old may be granted exemptions from the following hazardous occupations orders:

5. Power-driven woodworking machines
8. Power-driven metal-forming, punching, and shearing machines
10. Slaughtering, or meat-packing, processing or rendering
12. Power-driven paper-products machines
14. Power-driven circular saws. band saws. and guillotine shears.
16. Roofing operations
17. Excavations operations

The conditions which must be met before a Cooperative Vocational Education Student-Learner can be granted an exemption from these hazardous occupations are as follows:

The student-learner is enrolled in a course of study and training in a cooperative vocational training program under a recognized state or local educational authority or in a course of study in a substantially similar program conducted by a private school; and

A. Such student-learner is employed under a written agreement which provides:

1. That the work of the student-learner in the occupations declared particularly hazardous shall be incidental to the training;
2. That such work shall be intermittent and under the direct and close supervision of a qualified and experienced person;
3. That safety instructions shall be given by the school and correlated by the employer with on-the-job training;
4. That a schedule of organized and progressive work processes to be performed on the job shall have been prepared. Each such written agreement shall contain the name of the student-learner, and shall be signed by the employer and the school coordinator or principal. Copies of each agreement shall be kept on file by both the school and the employer. This exemption for the employment of student-learners may be revoked in any individual situation where it is found that reasonable precautions have not been observed for the safety of minors employed there-under. A high school graduate may be employed in an occupation in which training has been completed as provided in this paragraph as a student-learner, even though the youth is not yet 18 years of age.

The conditions which must be met before an apprentice can be granted an exemption from these hazardous occupations are as follows:

a. The apprentice is employed in a craft recognized as an apprenticeable trade.

b. The work of the apprentice in the occupations declared particularly hazardous is incidental to his training.
c. Such work is intermittent and for short periods of time and is under the direct and close supervision of journeyman as a necessary part of such apprentice training; and
d. The apprentice is registered by the Bureau of Apprenticeship and Training of the U.S. Department of Labor as employed in accordance with the standards of the state apprenticeship agency recognized by the Bureau of Apprenticeship and Training, or is employed under a written apprenticeship agreement and conditions which are found by the Secretary of Labor to conform substantially with such Federal or State standards.

The following clarification of Hazardous Occupations Orders 10 and 12 is provided:

Establishments include those where meat products are processed or handled, such as butcher shops, grocery stores, restaurants/fast-food establishments, hotels, delicatessens, and meat-locker (freezer-locker) companies, and establishments where any food product is prepared or processed for serving to customers.

The term operating or assisting to operate shall mean all work which involves starting or stopping a machine covered by this section, placing or removing materials into or from the machine, or any other work directly involved in operating the machine. The term does not include the stacking of materials by an employee in an area nearby or adjacent to the machine where such employee does not place the materials into the machine.

The term paper products machine shall mean all power-driven machines used in:
(a) The remanufacture or conversion of paper or pulp into a finished product, including the preparation of such materials for re-cycling; or
(b) The preparation of such materials for disposal. The term applies to such machines whether they are used in establishments that manufacture converted paper or pulp products, or in nonmanufacturing establishment.

In addition to the exemptions which may be granted to apprentices and student-learners, sixteen and seventeen year-old minors may be exempt from hazardous occupations order number two. This order prohibits minors under eighteen from being employed as a motor-vehicle driver or outside helper on any public road or highway. A sixteen or seventeen-year-old may be considered exempt from this order if all of the following conditions are met.

a. the automobile or truck does not exceed 6,000 pounds gross vehicle weight
b. the driving is restricted to daylight hours
c. such operation is occasional and incidental to the child's employment
d. minor possesses a valid driver's license
e. he/she has completed a State approved driver education course

f. the vehicle is equipped with a seat belt for the driver and each helper and the employer has instructed each child that they must be used
g. the operation does not involve the towing of other vehicles

Employment Standards for 14 and 15-Year-Olds

The Federal child labor provisions also specify standards for the employment of fourteen and fifteen-year-olds in nonagricultural occupations. Minors of this age can not legally work:

- during school hours
- before 7 a.m. or after 7 p.m. (from June 1 through Labor Day this is extended to 9 p.m.)
- more than 3 hours a day on school days
- more than 18 hours a week in school weeks
- more than 8 hours a day on non-school days
- more than 40 hours a week on non-school weeks

In addition to hour restrictions, employees of this age are also very limited in the types of work they can perform.

WECEP

However, some of the limitations placed upon the employment of fourteen and fifteen-year-olds can be varied if a student is enrolled in an approved Work Experience and Career Exploration Program (WECEP). Students in WECEP may be employed:

- during school hours
- for as many as 3 hours on a school day
- for as many as 23 hours in a school week
- in occupations otherwise prohibited

These programs are aimed specifically at motivating dropout-prone youth to become re-oriented toward education and better prepared for the world of work. WECEP is considered to be both preventive and preparatory in nature. It is preventive from the standpoint that it encourages youth to remain in school through a career oriented educational program designed especially to meet each participant's needs, interests, and abilities. It is preparatory in that it provides occupational skills through part-time work experience and aids individuals in their career decision-making processes.

Essentially, WECEP follows the cooperative vocational education model and is designed for fourteen and fifteen-year-olds. Schools wishing to establish a program just first receive permission from their State Department of Education.

AGRICULTURAL OCCUPATIONS

The Fair Labor Standards Act provides for the establishment of regulations governing employment of minors in agricultural occupations. These child labor provisions may apply to employment regardless of farm

size or the number of man-days of farm labor used on that farm. These standards also direct employment of all children, migrant as well as local resident children.

The Fair Labor Standards Act defines agriculture as farming in all its branches, including:
- cultivation and tillage of the soil
- dairying
- the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities
- the raising of livestock, bees, fur-bearing animals, or poultry
- any practices performed by a farmer or on a farm as an incident to or in conjunction with farming operations. This includes preparation for market, delivery to storage, to market, or to carriers for transportation to market.

Minimum Age Standards

16 – minimum age for employment
--in any agricultural occupation declared hazardous by the Secretary of Labor;
--during school hours.
14 – minimum age for employment outside school hours
--in any agricultural occupation not declared hazardous by the Secretary of Labor;
except:
* 12 and 13-year-olds may be employed with written parental consent or on a farm where the minor's parent or person standing in place of the parent is also employed;
* minors under 12 may be employed with written parental consent on farms whose employees are exempt from the Federal minimum wage provisions.

A minor of any age may be employed by a parent or a person standing in the place of a parent at any time, in any occupation; on a farm owned or operated by that parent or person.

Employment During School Hours
Minors under 16 years of age may not be employed during school hours unless employed by their parents or a person standing in the place of their parents. School hours are those set for the school district in which the minor is living while employed.

Hazardous Occupations
The Secretary of Labor has found and declared that the following occupations in agriculture are hazardous. Minors under 16 may not be employed at any time in these occupations unless working for a parent on a farm owned or operated by that parent.

I. Operating a tractor of over 20 PTO horsepower, or connecting or disconnecting an implement or any of its parts to or from such a tractor.
II. Operating or assisting to operate any of the following machines:
   A. Corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, or mobile pea viner

B. Feed grinder, crop dryer, forage blower, auger conveyor, or the unloading mechanism of a nongravity-type self-unloading wagon or trailer.
C. Power post-hole digger, power post driver, or nonwalking-type rotary tiller

III. Operating or assisting to operate any of the following machines:
A. Trencher or earthmoving equipment
B. Fork lift
C. Potato combine
D. Power-driven circular, band, or chain saw

IV. Working on a farm in a yard, pen, or stall occupied by a:
A. Bull, boar, or stud horse maintained for breeding purposes
B. Sow with suckling pigs, or cow with newborn calf

V. Felling, bucking, skidding, loading, or unloading timber with butt diameter of more than 6 inches

VI Working from a ladder or scaffold at a height of over 20 feet

VII. Driving a bus, truck, or automobile when transporting passengers, or riding on a tractor as a passenger or helper.

VIII. Working inside:
A. A fruit, forage, or grain storage designed to retain an oxygen deficient or toxic atmosphere
B. An upright silo within 2 weeks after silage has been added or when a top unloading device is in operating position
C. A manure pit
D. A horizontal silo while operating tractor for packing purposes.

IX. Handling or applying agricultural chemicals identified by the word "poison" and the "skull and crossbones" on the label or those identified by the word "warning" on the label

X. Handling or using a blasting agent, including but not limited to, dynamite, black powder, sensitized ammonium nitrate, blasting caps, and primer cord.

XI. Transporting, transferring, or applying anhydrous ammonia

Hazardous Occupations Exemptions

As with the hazardous occupations orders for nonagricultural occupations, student-learners may obtain exemptions from some of the hazardous occupations orders in

agriculture. Fourteen and fifteen-year-olds who are enrolled in a bona fide vocational agriculture program may obtain an exemption from orders one through six.

AGE CERTIFICATES

"Oppressive child labor" is defined as the employment of children who are under the legal minimum ages. Employers can protect themselves from unintentionally violating the minimum age standards of the child labor provisions by obtaining age certificates for every minor employed. Age certificates issued under most State laws are acceptable for this purpose.

Although The Fair Labor Standards Act does not require employers to obtain age certificates, it is highly recommended. Even employers who do not purposefully violate the law are subject to fines up to $5,000 for each violation. Fines for intentional violations go up to $10,000.

COOPERATIVE VOCATIONAL EDUCATION AND THE LAW

Teacher-coordinators are not responsible for determining whether an enterprise is covered by the Fair Labor Standards Act, nor are they responsible for enforcing the federal child labor provisions. However, they are obligated to operate within the law, although the federal child labor provisions obviously have a more direct impact upon secondary teacher-coordinators' duties, they effect Cooperative Vocational Education at all levels.

Since most secondary student-learners are minors under eighteen, the minimum age standard, the hazardous occupations orders and related exemptions effect many of the essential components of Cooperative Vocational Education. One of these components is the selection of potential student-learners. Because the law does not permit minors under sixteen to work during school hours except in very specific situations, teacher-coordinators must be careful to select student-learners who are an appropriate age. In addition, the child labor provisions specifically prohibit minors under eighteen from working in certain occupations. Consequently, sixteen or seventeen-year-olds who have occupational goals involving one of these prohibited occupations may not actually profit from enrolling in Cooperative Vocational Education.

Post-secondary teacher-coordinators also need to be aware of the federal child labor provisions. Since not all post-secondary student-learners are necessarily eighteen or older, their employment may still be subject to these provisions. In addition, employers rely on teacher-coordinators as readily accessible sources of information concerning all types of employment rules and regulations. But perhaps most importantly, an occupation that has been declared too hazardous for minors under eighteen is still dangerous once a student-learner turns eighteen. Consequently, it is important for all teacher-coordinators to be aware of the hazardous occupations orders, and other relevant regulations, so that

they are sure to provide sufficient safety instruction and that such instruction is adequately documented.

This information is for the purpose of assisting school-to-work individuals in meeting their responsibility with respect to employment. It is not a legal interpretation of the laws.

Questions regarding the Fair Labor Standards Act should be referred to the U.S. Department of Labor, Wage and Hour Division.